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IN THE

Supreme Court of the United States

OCTOBER TERM 1932.

No. 374

THE PEOPLE OF THE STATE OF NEW YORK,

Petitioners,

against

MARK M. MACLAY and CHARLES E. MCWILLIAMS, Receivers of MCWILLIAMS BROS., INC., and UNITED STATES OF AMERICA,

Respondents.

MOTION FOR CERTIORARI, PETITION FOR CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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State of New York.

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INDEX.

	Page
MOTION FOR CERTIORARI	1
PETITION	2
BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI	8
POINT I—The People of the State of New York are entitled to a preference in the payment of indebtedness due it from an insolvent estate by reason of a sovereign prerogative inherited from the British Crown	9
POINT II—The prerogative right of the State to a preferential payment has not been ceded to the Federal Government under any constitutional provision, but is still possessed by the State in full effect and vigor	10
POINT III—Congress has no constitutional right to pass any law prejudicing or interfering with the sovereign right of priority possessed by the State	10
POINT IV—A statutory right of preference possessed by the Federal Government cannot be equal to or superior to a sovereign prerogative enjoyed by a State	11
POINT V—Assuming, but not conceding, that the right of preference claimed by the Federal Government is equal in degree to that of a sovereign State, then both such rights to preference are equal to each other, and the assets of the insolvent should be prorated among both preferred claimants	12
POINT VI—The decision in Spokane County v. United States, 279 U. S. 30, is not controlling	15
CONCLUSION—It is respectfully submitted that the petition for certiorari should be granted as prayed for	20

TABLE OF CASES AND STATUTES CITED.

	Page
Spokane County v. The United States, 279 U. S. 30	4, 15, 16, 18, 19
Marshal v. The State of New York, 254 U. S. 380	6, 9, 11
26 Stat. 826, Chap. 517, Sec. 6	6
26 Stat. 826, Chap. 517, Sec. 7	8
Re Carnegie Trust Co., 151 N. Y. App. Div. 606, affd. 206 N. Y. 390	9
Matter of Neiderstein, 154 N. Y. App. Div. 238	9
Matter of Wesley, 156 N. Y. App. Div. 403	9
Lane v. Oregon, 74 U. S. 71	10
M'Culloch v. Maryland, 4 Wheat. 316, 425	10
Whittaker v. Haley, 2 Ore. 128	10
United States v. The State Bank of North Carolina, 6 Pet. 29, 35	11
Field v. The United States, 9 Pet. 182	11, 15
United States v. The State of Oklahoma, 261 U. S. 253	11
Equitable Trust Co. v. Connecticut Brass Co., 290 Fed. 712	11
Liberty Mutual Co. v. Johnson, 6 Fed. (2d) 752	11
Revised Statutes, Section 3466	11, 17
Re Wiley, 292 Fed. 900	12
Re A. E. Fountain, 295 Fed. 873	13
United States v. Snyder, 149 U. S. 210	15
Ferris v. Chic-Mint, 14 Del. Ch. 232	15
Revised Statutes, Sec. 3186, U. S. C., Title 26, Sec. 115	15
Exchange National Bank v. United States, 147 Wash. 176	17
Tax Law of the State of New York, Sec. 197	19
United States v. Nicholls, 4 Yeates 251	20

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Respondents.

MOTION FOR CERTIORARI.

Comes now the petitioners, The People of the State of New York, with Charles A. Schneider and Robert P. Beyer, as counsel, and moves this Honorable Court that it will by certiorari or other proper process directed to the Honorable Circuit Court of Appeals for the Second Circuit, requiring said Court to certify to this Court for its review and determination a certain cause in said Circuit Court of Appeals lately pending, entitled "North River Coal & Wharf Co., Complainant, against McWilliams Bros., Inc., Defendant; The People of the State of New York, Claimants-Appellants, against Mark M. Maclay and Charles E. McWilliams, Receivers of McWilliams Bros., Inc., and United States of America, Appellees," and to that end your petitioners now tender herewith their petition and brief, with a certified copy of the record in said Circuit Court of Appeals.

CHARLES A. SCHNEIDER and
ROBERT P. BEYER,
Attorneys for Petitioners,
Office & Post Office Address,
80 Centre Street,
New York City, N. Y.

SUPREME COURT OF THE UNITED STATES.

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Respondents.

PETITION.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioners, The People of the State of New York, respectfully show to this Honorable Court:

FIRST: That there is pending in the District Court of the United States for the Southern District of New York a certain action in equity, entitled "North River Coal & Wharf Company, Complainant, against McWilliams Bros., Inc., Defendant." In connection with said action Mark M. Maclay and Charles E. McWilliams have been duly appointed by said United States District Court for the Southern District of New York as receivers of the defendant corporation, McWilliams Bros., Inc., for the purpose of liquidating its affairs and distributing its assets in the payment of the creditors of said corporation.

SECOND: That in connection with said case, the said District Court of the United States for the Southern District

of New York made an order on the 16th day of March, 1931 (Record on Appeal, fols. 97 to 105), which said order allows certain claims due by the defendant corporation to the United States of America, amounting in total to $34,180.43, with addition of interest as in said order provided, and further allowed the claim due to the State of New York for franchise taxes assessed against the defendant corporation in the principal sum of $3,131.05, with addition of interest as in said order provided.

THIRD: That the assets in the hands of the receiver for administration are insufficient to pay the several claims allowed to the United States of America and to the State of New York in full, and said order provided that the claim of the United States of America be paid, as far as the assets of the defendant corporation will permit, in full, before any payment be made by the receivers on account of the franchise tax claim of the State of New York.

FOURTH: From the said order of the District Court of the United States for the Southern District of New York an appeal was taken by the petitioners, The People of the State of New York, to the Circuit Court of the United States for the Second Circuit on three Assignments of Error, briefly summarized as follows: (1) That the claim of the petitioners, The People of the State of New York, for franchise taxes were payable in priority to the claims of the United States of America, said priority of the petitioners, The People of the State of New York, arising from the inheritance by the State of New York of the common law sovereign right of priority possessed by the Crown of England, a right which was not surrendered or ceded to the United States of America under and pursuant to the Constitution of the United States of America or any amendment thereof, and that the Congress of the United States of America had no constitutional right to pass any law or laws which would in any manner, shape or form prejudice or interfere with the assertion of the sovereign right of prior-

ity possessed by the petitioners, The People of the State of New York, in the payment of taxes and other indebtedness due said State.

FIFTH: That the United States of America did not inherit or obtain the sovereign right of priority possessed by the Crown of England, but that said priority was and is the exclusive right of the several States of the United States of America.

SIXTH: That should the Court determine that the United States of America had priority in the payment of its debts over general creditors, and that the United States of America had an equal priority with that possessed by the petitioners, The People of the State of New York, then said priorities are of the same class of preference, and that if the estate of the corporation in liquidation, to-wit, McWilliams Bros., Inc., is not sufficient to pay the several claims of the United States of America and The People of the State of New York in full, that the balance of the estate should be prorated between the United States of America and The People of the State of New York in the proportion that the balance of the estate in the hands of the receivers bears to the total amount of the respective claims of the United States of America and The People of the State of New York.

SEVENTH: The Circuit Court of Appeals of the United States for the Second Circuit affirmed the order of the District Court of the United States on the authority of *Spokane County* v. *The United States,* 279 U. S. 30, and the question for review before this Court is solely whether tax claims of the United States of America are entitled to a priority of payment over like claims possessed by individual States.

EIGHTH: The petitioners contend that the determination of the question involved is not precluded by the decision of this Court rendered in *Spokane County* v. *The United States,* 279 U. S. 30, but the facts in this case call for a different determination.

NINTH: That the proper determination of the question presented is of paramount public importance to finally settle a conflict which for many years has existed between the United States Government and the several States in the collection of taxes from estates of corporations and individuals in liquidation.

TENTH: That for many years prior to the determination made in the instant case, a verbal agreement existed between the United States Government and the State of New York to prorate their respective claims in estates where the assets were not sufficient to pay the several tax claims in full, and that by this agreement the determination of the question of the relative status of the Federal Government and the several States in such instances has been avoided. In the instant case, however, the position taken by the United States Government in insisting upon its priority of payment has finally resulted in a decision thus far adverse to the contention of the State of New York. Inasmuch as the final determination of the question involved has not been concluded by the decision of this Court in the Spokane case cited, and inasmuch as this same question will have to be finally settled in order to determine the relative status between the States and the Federal Government in insolvency liquidations, it is respectfully submitted that this is one of the cases where this Court should exercise its discretion in reviewing the determination made by the United States Circuit Court of Appeals for the Second Circuit through the allowance of the writ of certiorari applied for.

ELEVENTH: A final determination by this Court is not only of paramount public importance in the proper administration of the tax system of the State of New York, but is of equal importance in determining this question as affecting every State in the Union in its relation to the Federal Government.

TWELFTH: It is submitted by the petitioners, The People of the State of New York, that the priority of a sovereign State, as contended for herein, should be affirmed and reasserted by this Court so that the sovereignty of the State of New York, as interpreted by this Court in *Marshal* v. *The State of New York,* 254 U. S. 380, may be maintained and preserved.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and send to this Court on a day certain to be thereafter designated, a full, true and complete transcript of the record and of all the proceedings in said Circuit Court of Appeals in the said cause therein, entitled "North River Coal & Wharf Company, Complainant, against McWilliams Bros., Inc., Defendant; The People of the State of New York, Claimants-Appellants, against Mark M. Maclay and Charles E. McWilliams, Receivers of McWilliams Bros., Inc., and United States of America, Appellees," to the end that said cause may be reviewed and determined by this Court as provided in Section 6 of the Act of Congress entitled, "An Act to establish a Circuit Court of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891 (26 Stat. 826, Chap. 517), and that your petitioners may have such other and further relief or remedy in the premises as to this Court may seem appropriate and in conformity with said Act, and that the decree of the United States Circuit Court of Appeals for the Second Circuit in said cause and of the District Court of the United States for the Southern District of New York, and each and every part thereof may be reversed by this Honorable Court, and that the receivers herein be instructed and ordered to pay the claim of the petitioners, The People of the State of New York, with accumulated interest prior to the making of any payment on account of any claims filed

by the respondent, United States of America, and that this Honorable Court may make such further order and direction in the premises as may be in accordance with the law to be applied in the facts in this case.

And your petitioners will ever pray.

THE PEOPLE OF THE STATE OF NEW YORK,
Petitioners,
By JOHN J. BENNETT, JR.,
Attorney General of the
State of New York.

CHARLES A. SCHNEIDER,
ROBERT P. BEYER,
Counsel for Petitioners,
80 Centre Street,
New York City, N. Y.

STATE OF NEW YORK,
CITY OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

CHARLES A. SCHNEIDER, being duly sworn, deposes and says: That he is a Deputy Assistant Attorney General of the State of New York and is one of the counsel for the petitioners herein; that he has prepared the foregoing petition and that the allegations therein are true, as he verily believes.

CHARLES A. SCHNEIDER.

Sworn and subscribed before me this
15th day of September, 1932.

HENRY UNTERWEISER,
Notary Public, Bronx County.
Bronx Co. Clk.'s No. 1, Reg. No. ——.
N. Y. Co. Clk.'s No. 8, Reg. No. 4U7.
Kings Co. Clk.'s No. 7, Reg. No. 4002.
Queens Co. Clk.'s No. 602, Reg. No. 2827.
Commission expires March 30, 1934.

SUPREME COURT OF THE UNITED STATES.

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Respondents.

PETITIONERS' BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

The petitioners, The People of the State of New York, petition this Honorable Court to review by certiorari an order of the Circuit Court of Appeals for the Second Circuit made final under Section 7 of an Act of Congress entitled, "An Act to Establish a Circuit Court of Appeals, and to review and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891 (26 Stat. 826, Chap. 517).

This case involves the decision on the sole question whether tax claims of the United States of America are entitled to payment in priority over like claims of individual States in insolvency liquidations where the assets are insufficient to pay all such claims in full.

The claim of the petitioners, The People of the State of New York, total $3,131.05, plus accrued interest, being for franchise and other taxes. The Federal Government's

claims total $34,180.43, plus accrued interest, being for income taxes and disbursements. There are insufficient funds to pay both claimants in full.

The People of the State of New York respectfully submit that if priority as between two sovereigns, independent and yet mutually associated, is to be determined, the claim of superior priority asserted by the United States of America should be denied and that of The People of the State of New York be recognized.

POINT I.

The People of the State of New York are entitled to a preference in the payment of indebtedness due it from an insolvent estate by reason of a sovereign prerogative inherited from the British Crown.

By virtue of the provision in the constitution of the State of New York that the common law of England should be and continue the law of the State, the latter, as sovereign, succeeded to the Crown's prerogative right of priority extending to all debts due to the State. This sovereign right has been fully recognized and given effect not only by the State's courts (*Re Carnegie Trust Co.*, 151 N. Y. App. Div. 606, affd. 206 N. Y. 390; *Matter of Neiderstein*, 154 N. Y. App. Div. 238; *Matter of Wesley*, 156 N. Y. App. Div. 403), but also by the United States Supreme Court (*Marshal* v. *State of New York*, 254 U. S. 380). Mr. Justice BRANDEIS, delivering the opinion for a unanimous court in the *Marshal* case, supra, stated, page 383:

> "This priority has been enforced by the courts of New York under a great variety of circumstances in an unbroken series of cases extending over more than half a century. It has been enforced as a right, and not as a rule of administration. This priority arose and existed independently of any statute. The legislature has never, in terms, limited its scope; and the courts have rejected as unsound every conten-

> tion made that some statute before them for construction had, by implication, effected a repeal or abridgment of the priority. The only changes of the right made by statute have been by way of enlarging its scope in certain cases."

POINT II.

The prerogative right of the State to a preferential payment has not been ceded to the Federal Government under any constitutional provision, but is still possessed by the State in full effect and vigor.

In *Lane* v. *Oregon,* 74 U. S. 71, this Court determined that each State possessed the right of taxation for its own economic purposes and that said right remained unimpaired by the cession of other powers to the Federal Government.

POINT III.

Congress has no constitutional right to pass any law prejudicing or interfering with the sovereign right of priority possessed by the State.

In *M'Culloch* v. *Maryland,* 4 Wheat. 316, 425, this Court commented on the right of taxation reserved to the States. In this connection, the language of the Court in *Whittaker* v. *Haley,* 2 Ore. 128, was decisive as showing the reason for the point, stating:

> "The revenue is the life of the State and for Congress to say when and where and in what manner it must be laid and collected, in other words, to say when a State should breathe, would be giving Congress the sole power of life and death over a State. What are the other rights worth when that upon which its life depends is denied? Interference as to any one of the incidents of levying and collecting taxes would as effectively take away State independence as it would to wholly deny the right."

POINT IV.

A statutory right of preference possessed by the Federal Government cannot be equal to or superior to a sovereign prerogative enjoyed by a State.

In *Marshal* v. *State of New York,* 254 U. S. 380, this Court, in an elaborate opinion, held that the State of New York derived its right of preference in the payment of obligations due it not only from statutes expressing such right, but as an inheritance from the Crown of England, an inheritance which should not extend to the Federal Government. The lesser nature of the Federal right of preference was expressed by this Court in *United States* v. *The State Bank of North Carolina,* 6 Pet. 29, 35, in which this Court determined that the claims due to the United States did not stand upon any sovereign prerogative, but were exclusively founded upon the actual provisions of Federal statutes. This lesser right of the Federal Government was again reiterated in *Field* v. *The United States,* 9 Pet. 182, and as recently as the decision rendered by this Court in *United States* v. *The State of Oklahoma,* 261 U. S. 253, in which the superior right of priority of the State of Oklahoma was allowed in preference to claims filed by the Federal Government.

In this connection, these decisions of this Court have been followed by Circuit Court decisions in other Circuits. May we refer to *Equitable Trust Co.* v. *Connecticut Brass Co.,* 290 Fed. 712, and *Liberty Mutual Co.* v. *Johnson,* 6 Fed. (2d) 752.

It will also be noted by this Court that Section 3466 of the Revised Statutes, on which the Federal Government relies in this case, has no lien features attached to it giving the Government any rights in and to the estate of the insolvent, except a statutory right of priority akin to that

inherited by the States from the common law. Hence, in harmonizing the authorities on the question, this Court must determine this case in accordance with the well-established principle that, as between the common law sovereignty of the State and the statutory preference of the Federal Government, the former should prevail.

POINT V.

Assuming, but not conceding, that the right of preference claimed by the Federal Government is equal in degree to that of a sovereign State, then both such rights to preference are equal to each other, and the assets of the insolvent should be prorated among both preferred claimants.

If superior sovereign status be denied to the United States of America, and similarly denied to The People of the State of New York, as against each other, then there must exist an equality of sovereignty between the two.

In *Re Wiley,* 292 Fed. 900, we find the Court construing the Bankruptcy Law and declaring it to be the rule that where State and Federal claims for taxes remain unpaid, prorating should be practiced. The following language of the Court is especially applicable to the instant case:

> "There is no competition here between any but tax liens. Considering the dual nature of our Government, and that neither the Union nor the States may destroy or hinder the other in their several functions, and all having equal need of their revenues, it is concluded that the intent of Congress was that there should be a pro rata payment upon all taxes named in Section 64-a, when the available fund is not sufficient to pay in full, the taxes due the United States having no priority over the others."

May we also refer to the language in *Re A. E. Fountain*, 295 Fed. 873, as follows:

> "It is evident that such a practical adjustment is much wiser than a contest between the two sovereignties in the imposition of statutory liens."

The record in this case shows that the lien of the State of New York for its demand accrued prior to the time of accrual of the Federal claims. According to the record in this case, the following is a detailed statement of the respective tax claims, the amounts and the dates of liens:

Gross Earnings Taxes (Sec. 184, Art. 9 of the Tax Law)

Taxable Year Ending	*Tax*	*Date of Lien*
June 30, 1921	$ 39.93	Aug. 1, 1921
June 30, 1922	653.27	Aug. 1, 1922
June 30, 1923	914.77	Aug. 1, 1923
June 30, 1924	208.85	Aug. 15, 1924
June 30, 1925	285.38	Aug. 15, 1925
June 30, 1926	193.64	Aug. 15, 1926
June 30, 1927	103.96	Aug. 15, 1927
June 30, 1928	24.93	Aug. 15, 1928

Franchise Taxes (Sec. 182, Art. 9 of the Tax Law)

Taxable Year Beginning	*Tax*	*Date of Lien*
Jan. 1, 1925	$215.62	Mar. 15, 1925
Jan. 1, 1926	208.22	Mar. 15, 1926
Jan. 1, 1927	173.11	Mar. 15, 1927
Jan. 1, 1928	99.37	Mar. 15, 1928
Jan. 1, 1929	10.00	Mar. 15, 1929

The Federal claims are as follows:

On account of Light House Service incurred by the defendant July 13, 1926, claim filed with receivers March 19, 1927.....$516.46

Additional Income Taxes

Taxable Period	*Amount*	*Date Assessed*	*Claim Filed*
Jan. 1, 1917–July 13, 1927	$ 5,263.24	Mar. 8, 1923	Jan. 25, 1927
Year 1918	$28,400.73	Sept. 15, 1925	Jan. 25, 1927

The claim of the United States Government on account of lighthouse service amounting to $516.46 was a general contract claim due to the Government and, in the absence of any judgment on said claim, would never ripen into a lien against insolvent's assets.

The other two Government claims aggregating $33,666.97 were claims for additional income tax for the tax years 1917 and 1918, apparently resulting from a re-audit of the reports filed by the insolvent corporation for the said tax years. The claims for these additional re-audited income taxes were filed with the receiver on or about January 20, 1927, and the statement of the claim asked interest from April 13, 1923, and November 13, 1925, which is the only statement in the record as to dates when re-audits were made (Record, fol. 42).

The tax claims of the State of New York for the years 1921 and 1922 were therefore prior both in point of time and lien to the claims of the United States Government. The State's claims for the years 1923, 1924 and 1925 were prior both in point of time and lien to the claims of the United States Government for $28,400.73, as to which the re-audit date cannot be taken earlier than November 13, 1925. The subsequent tax claims of the State of New York were prior, in date of accrual of lien on the corporate assets, to the claims of the United States Government as the Government acquired no lien on account of such additional income taxes claimed until the date of filing of a government lien under the statute. No government lien in this case appears to have been filed, the Government contenting itself with the filing of proofs of claim with the receiver on January 20, 1927. No lien of the Federal Government, therefore, ever attached to the corporate assets

and such lien cannot now be imposed to destroy in whole or in part the specific liens which the State acquired as of the dates hereinbefore set forth in the itemized schedule of its demands.

POINT VI.

The decision in *Spokane County* v. *United States*, 279 U. S. 30, is not controlling.

A careful review of the authorities cited in the opinion of the United States Supreme Court will demonstrate that the decision in that case is to be strictly confined to the facts then before the Court for adjudication. The case of *Field* v. *United States*, 9 Pet. 182, is cited, but is inapplicable, for in the instant case no attempt is made by the State of New York to favor individual creditors ahead of that of the United States. Nor is *U. S.* v. *Snyder*, 149 U. S. 210, which is cited, applicable, since the sole question raised in that case related to the State statute respecting the recording of liens by individual creditors and their effect on the Federal tax system.

The learned Chief Justice dismisses with much ado the decision of the Court in *Ferris* v. *Chic-Mint*, 14 Del. Ch. 232. In that case there were several claimants, including a mortgagee, the State of Delaware and the United States. Under the Revised Statutes, Section 3186, U. S. C., Title 26, Section 115, the mortgagee was given priority over the United States. The Delaware Law granted a preference to the State over the mortgagee. The Chancellor allowed the claims in the following order: The State, the mortgagee and the United States. The distinguished Chancellor very properly concluded:

> "When the government agreed, by § 3186, to take grant after the mortgagee, it must necessarily follow that it is subordinate in rank to those who are superior to its immediate senior."

This decision, as was stated, was dismissed by the Chief Justice with the statement:

> "Since no third creditor was involved, the case is not in point."

With due respect for the opinion of the Court, we, nevertheless, regard the decision as clearly applicable, since the Government failed to contest the claim of priority accorded to the State as such, apart from the preference gained by the State by reason of its superior status over the mortgagee.

Despite the inapplicability of the cases cited, and to which we have just alluded, the learned Chief Justice concluded:

> "The foregoing citations certainly make it clear that the United States has power, in order to collect its taxes and its revenues and debts due it, to confer priority forthwith over those of the states."

Frankly, we do not understand that the cases cited by the learned Chief Justice do, in fact, support the Federal Government's contention, that thereby the right to priority was "established" or sustained on behalf of the United States as against the States. We make this statement with all due deference for the Court's opinion.

Apart from these considerations, we cannot regard the *Spokane* case as representing a true test of the important question involved. A fair construction inevitably must lead one to the conclusion that, apart from all other considerations, it was decided upon the technical ground that there had been a failure on the part of the parties involved in the *method of perfecting* their liens, and having failed to properly perfect their liens, the claim of the Federal Government enjoyed priority. In the instant case, there is no like question. The Federal Government does not assert that the State's liens had not attached, nor that they had been improperly perfected, since the statute very plainly indicates the automatic character of the lien.

A case not cited, but which we nevertheless boldly present, appears to sustain the Federal Government's contention. We present it herewith with the sole comment that we do not believe it to represent authoritative law.

Exchange National Bank v. *U. S.*, 147 Wash. 176.

The doctrine enunciated is dangerous since it places the burden of proof upon the State to establish its supremacy over that of the Federal Government, and the Court concludes that no authority is presented giving supremacy to the State where conflict arises between it and the Federal Government as to priorities. We quote from the Court's opinion:

> "When the State granted to the Federal government the power to levy taxes, it thereby gave up the right to maintain that its taxes should be superior to those of the Federal government, if Congress by appropriate legislature declared their supremacy.
>
> We now turn to the contention that since the State is not named in * * * 3466 (that section) will not be construed as binding upon the State. The argument is twofold: First it is said that a familiar rule of construction requires us to hold that, whenever a sovereign is not named in a Statute, it is not bound by the Act if it tends to restrain or diminish its rights or powers * * *" (citing two cases).

The second contention is not pertinent, hence not referred to. Despite this "familiar rule of construction," referred to as the first argument, the Court, nevertheless, held that the sovereign, though not named in the statute, was bound by Section 3466, thus defying all precedent to the contrary. The dissenting opinion, after reciting that the claim of the State is excluded from the operation of Section 3466, urged:

> "The States existed before the United States. They created the Union, and by express constitutional provision, that Union has only such powers

> as are expressly delegated to it or are necessary to carry into effect the delegated powers. All other governmental powers are expressly reserved to the States. * * * If Congress can enact the law making its tax a first claim against the property of an insolvent corporation, then it has power to make its tax a first claim against all property of solvent persons and corporations and thereby take from the State its power to exist."

Our case can hardly be presented in better language. The dissenting opinion re-echoes the famous doctrine enunciated by the great Chief Justice of the United States Supreme Court, JOHN MARSHALL, that "the power to tax is the power to destroy," and if the Federal Government is unrestrained in its present effort, it must inevitably lead, if not to the destruction of the States, surely to its circumscription.

The question at issue may be stated as follows: Shall we allow the theory to prevail that all power is to be centralized in the Federal Government, or shall we preserve the principles upon which the Federal Government was founded, namely, the establishment by a compact of an association of states for the protection of all as against a common enemy or as against each other?

The distinguishing features of the *Spokane* case with that of the case at bar appear from the limitations of the *Spokane* case, in the following quotation from page 94 of the opinion:

> "It seems clear to me that each of these two tax debts primarily came into existence by the levy of a tax in personam, and not by the levy of a tax in rem. I think a critical reading of the revenue legislation of the respective sovereignties, the United States and the state, and the record in this case showing the manner of the levying of these respective taxes, will render this plain. The revenue legislation of each has prescribed procedure by which

> its personam tax debts may be made specific liens upon property of one personally owing such tax debts. This record, I think, warrants the conclusion that neither the United States, the state of Washington, nor Spokane county for the state of Washington, has ever, by the prescribing statutory procedure, perfected its inchoate tax lien right against any of the property of which the funds here in question are the proceeds. I, therefore, view these respective tax debts wholly apart from any supporting lien right."

In other words, before the State of Washington or the County of Spokane acquired any specific lien against the property of any insolvent corporation, it was necessary to take some assertive form of procedure. Under the Tax Law of the State of New York (Sec. 197), it is unnecessary for the State to take any such procedure before acquiring a lien, as the statute makes its demands liens from the time that the tax is imposed until the same is paid in full. The lien, therefore, is automatically created, without the necessity of any affirmative procedure following the imposition of the tax. The Court in this case is, therefore, concerned with the following situation: The United States goes into court with tax demands which have not ripened into any specific lien, claiming a mere right of priority under Section 3466 of the Revised Statutes, which creates a mere preferential right of payment as against individual creditors. The State goes into court with tax claims, all of which have ripened into statutory liens, and all of which have become specific liens upon the property of the insolvent corporation in point of time prior to the accrual of any Federal lien.

Mr. Chief Justice TAFT in the *Spokane* case clearly indicated that in a situation as now presented to the Court for adjudication, the fact that the sovereign claim ripened into a statutory lien would give such claim a priority of payment to the claim of another sovereignty not thus protected and secured.

The Court's opinion in *U. S.* v. *Nicholls,* 4 Yeates 251, bears repetition here:

> "The rights of a general government to priority of payment, and the rights of individual states, are contemplated as subsisting at the same time, and as perfectly compatible with each other. This can only be effected by giving preference to each existing lien, according to its due priority in point of time. I know of no other mode whereby the several conflicting claims can with justice be protected and secured."

CONCLUSION.

It is respectfully submitted that the petition for certiorari should be granted as prayed for.

From the foregoing brief, this Court will appreciate the national and state importance of the question involved and the necessity for a final and conclusive determination by this Court.

Respectfully submitted,

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